DEPARTMENT OF STATE REVENUE

02-20140326.SLOF

Supplemental Letter of Findings: 02-20140326
Corporate Income Tax
For Tax Years 2010, 2011, and 2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Company was liable for additional income tax because its documentation failed to substantiate its claimed Indiana qualified research expense tax credit. Company established reasonable cause for penalty abatement.

ISSUES

I. Corporate Income Tax - Indiana Qualified Research Expense Tax Credit.

Authority: I.R.C. § 41; I.R.C. § 63; IC § 6-3-2-1; IC § 6-3-1-3.5; IC § 6-3.1-4-1; IC § 6-3.1-4-4; IC § 6-8.1-5-1; IC § 6-8.1-5-4; Treas. Reg. § 1.41-4; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Stinson Estate v. United States, 214 F.3d 846 (7th Cir. 2000); United States v. McFerrin, 570 F.3d 672 (5th Cir. 2009); Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96 (Ind. Ct. App. 1974); United Stationers, Inc. v. United States, 163 F.3d 440 (7th Cir. 1998); Norwest v. Commissioner, 110 T.C. 454 (1998); T.D. 8930 (Jan. 3, 2001); Research and Experimentation Tax Credit: Current Status and Selected Issues for Congress, CRS RL31181, 2009 WL 5529661 (July 15, 2009).

Taxpayer claimed that the Indiana Department of Revenue erred in disallowing the Indiana qualified research expense tax credit.

II. Tax Administration - Underpayment Penalty.

Authority: IC § 6-3-4-4.1.

Taxpayer protests the imposition of the underpayment penalty.

STATEMENT OF FACTS

Taxpayer is a company which manufactures products used for cryogenic liquid storage and transfer. Taxpayer's products include containers, vacuum jacketed piping, valves, and venting. Taxpayer also designs and manufactures custom-engineered transfer, control and storage systems for various industries.

Taxpayer employed a consulting firm ("Consultant") to conduct a study to determine if it was entitled to certain qualified research expense tax credit ("QRE") for expenses it incurred, which, in turn, reduced Taxpayer's income tax liability. The study included years 2009 through 2012. Based on the Consultant's study, Taxpayer claimed that it was entitled to Indiana QREs for the 2011 year (in the amount of $72,559) and for the 2012 year (in the amount of $38,863). In its 2011 and 2012 Indiana income tax returns, Taxpayer claimed some of the above mentioned QREs and carried the remainder over to future years beyond 2012.

The Indiana Department of Revenue ("Department") conducted a corporate income tax audit of Taxpayer's business records and returns for the tax years 2010, 2011 and 2012. Pursuant to the audit, the Department adjusted some of Taxpayer's net operating losses. Additionally, the Department disallowed the total Indiana QREs claimed by Taxpayer. Taxpayer used a statistical sampling methodology in computing its Indiana QREs but its methodology did not comport with Indiana requirements.

Taxpayer, in its May 9, 2014, letter, protested the Department's disallowance. Upon review, the field examiners were instructed to conduct a supplemental audit. The supplemental audit commenced in late 2014 and concluded in April 2015. The supplemental audit determined that Taxpayer's additional supporting documentation failed to support its claimed Indiana QREs. The supplemental audit disallowed the full amount of QREs claimed, including the remainder available to be carried over going forward beyond 2012. Based on this disallowance, the supplemental audit adjusted Taxpayer's Indiana QREs to zero dollars ($0) for both 2011 and 2012 tax years. As a result, the Department assessed Taxpayer additional income tax and interest. The Department also imposed an underpayment penalty for both tax years at issue.

Taxpayer continues protesting the disallowance of the full amount QREs ($72,559 in 2011 and $38,863 in 2012). A hearing was scheduled for May 7, 2015, and Taxpayer did not participate in the scheduled hearing. The Department administratively closed Taxpayer's protest. Taxpayer subsequently contacted the Department requesting a rehearing. A rehearing was conducted by phone during which Taxpayer's representatives explained the basis for the protest. Taxpayer further offered additional explanation and documents, including a compact disc, to support its position. This final determination results. Additional facts will be provided as necessary.

I. Corporate Income Tax - Indiana Qualified Research Expense Tax Credit.

DISCUSSION

In claiming the Indiana QREs, Taxpayer referenced the Consultant's study that included many projects. For the purpose of the supplemental audit, Taxpayer and the Department agreed to review all records, including all documents contained within the project folders and electronic files relating to forty of the total projects. The supplemental audit concluded that Taxpayer was not entitled to the claimed QREs. Specifically, the supplemental audit found that Taxpayer's projects were adaptation of existing business components, were tailored to specific requests/orders of its customers, and were conducted outside of Indiana. The supplemental audit also found that Taxpayer classified the materials it used for those projects as "Cost of Goods Sold," and that after completing a "Returned Goods Evaluation," it restocked the returned materials.

Taxpayer, to the contrary, argued that it was entitled to the Indiana QREs. Taxpayer maintained that its supporting documentation demonstrated that it conducted qualified research pursuant to federal and Indiana statutes, regulations, and case law.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 587 (Ind. 2014) (citing UACC Midwest, Inc. v. Indiana Dep't of State Rev. 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." Caterpillar, Inc., 15 N.E.3d at 583.

For income tax purposes, Indiana follows the federal tax scheme with certain modifications. IC § 6-3-2-1(b); IC § 6-3-1-3.5(b). To compute the income subject to Indiana corporate income tax, Indiana adopts a multistep process to calculate a corporate taxpayer's taxable Indiana adjusted gross income. Caterpillar, Inc., 15 N.E.3d at 581. The federal law requires taxpayers to report and pay their federal income tax when their gross income exceeds a certain amount. For state income tax purposes, the presumption is that the taxpayers properly and correctly file their federal income tax returns. The Indiana statute refers to the Internal Revenue Code to efficiently and effectively compute what is considered taxpayers' Indiana income tax. That is, IC § 6-3-1-3.5(b) simply provides the starting point to determine a corporate taxpayer's taxable income, stating that the term "adjusted gross income" shall mean, "In the case of corporations the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code) adjusted as follows . . . ." In determining the taxpayer's Indiana adjusted gross income, Indiana first refers to I.R.C. § 63 as the beginning point. From there, the taxpayer must follow various enumerated adjustments–additions and/or subtractions–under IC § 6-3-1-3.5(b).

Indiana also provides certain tax credits, outlined in IC § 6-3-3, which a taxpayer may claim to reduce its taxable income. Similar to deductions, exemptions, and exclusions "[t]ax credits are a matter of legislative grace, are only

allowed as clearly provided for by statute, and are narrowly construed." United States v. McFerrin, 570 F.3d 672, 675 (5th Cir. 2009) (citing Stinson Estate v. United States, 214 F.3d 846, 848 (7th Cir. 2000)). The taxpayer who claims a tax credit against any tax is required to retain records necessary to substantiate a claimed credit. IC § 6-8.1-5-4(a); Treas. Reg. 1.41-4(d). Where such a credit is claimed, "the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp., 310 N.E.2d 96, 100-01 (Ind. Ct. App. 1974).

One of the tax credits is the "Indiana qualified research expense" tax credit pursuant to IC § 6-3.1-4. Specifically, IC § 6-3.1-4-1, in relevant part, provides:

> As used in this chapter:
>
> "Base amount" means base amount (as defined in Section 41(c) of the Internal Revenue Code as in effect on January 1, 2001), **modified by considering only Indiana qualified research expenses and gross receipts attributable to Indiana** in the calculation of the taxpayer's:
> . . .
> "Indiana qualified research expense" means qualified research expense that is **incurred for research conducted in Indiana**.
>
> "Qualified research expense" means qualified research expense (as defined in Section 41(b) of the Internal Revenue Code **as in effect on January 1, 2001**).
>
> "Research expense tax credit" means a credit provided under this chapter against any tax otherwise due and payable under IC 6-3.
>
> "Taxpayer" means an individual, a corporation, a limited liability company, a limited liability partnership, a trust, or a partnership that has any tax liability under IC 6-3 (adjusted gross income tax).
>
> (**Emphasis added**).

IC § 6-3.1-4-4 in relevant part references, I.R.C. § 41 "as in effect on **January 1, 2001**, and the regulations promulgated in respect to those provisions and **in effect on January 1, 2001**, are applicable to the interpretation and administration by the department of the credit provided by this chapter, including the allocation and pass through of the credit to various taxpayers and the transitional rules for determination of the base period." (**Emphasis added**).

"Qualified research" is defined in I.R.C. § 41(d), as follows:

> **(1) In general.**--The term "qualified research" means research--
> **(A)** with respect to which expenditures may be treated as expenses under section 174,
> **(B)** which is undertaken for the purpose of discovering information--
> **(i)** which is technological in nature, and
> **(ii)** the application of which is intended to be useful in the development of a new or improved business component of the taxpayer, and
> **(C)** substantially all of the activities of which constitute elements of a process of experimentation for a purpose described in paragraph (3). Such term does not include any activity described in paragraph (4).
> **(2) Tests to be applied separately to each business component.**--For purposes of this subsection--
> **(A) In general.--**Paragraph (1) shall be applied separately with respect to each business component of the taxpayer.
> **(B) Business component defined.--**The term "business component" means any product, process, computer software, technique, formula, or invention which is to be--
> **(i)** held for sale, lease, or license, or
> **(ii)** used by the taxpayer in a trade or business of the taxpayer.
> **(C) Special rule for production processes.--**Any plant process, machinery, or technique for commercial production of a business component shall be treated as a separate business component (and not as part of the business component being produced).
> **(3) Purposes for which research may qualify for credit.**--For purposes of paragraph (1)(C)--
> **(A) In general.--**Research shall be treated as conducted for a purpose described in this paragraph if it relates to--
> **(i)** a new or improved function,
> **(ii)** performance, or

(iii) reliability or quality.

(B) Certain purposes not qualified.--Research shall in no event be treated as conducted for a purpose described in this paragraph if it relates to style, taste, cosmetic, or seasonal design factors.

(4) Activities for which credit not allowed.--The term "qualified research" shall not include any of the following:

(A) Research after commercial production.--Any research conducted after the beginning of commercial production of the business component.

(B) Adaptation of existing business components.--Any research related to the adaptation of an existing business component to a particular customer's requirement or need.

(C) Duplication of existing business component.--Any research related to the reproduction of an existing business component (in whole or in part) from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to such business component.

(D) Surveys, studies, etc.--Any--

(i) efficiency survey,

(ii) activity relating to management function or technique,

(iii) market research, testing, or development (including advertising or promotions),

(iv) routine data collection, or

(v) routine or ordinary testing or inspection for quality control.

(E) Computer software.--Except to the extent provided in regulations, any research with respect to computer software which is developed by (or for the benefit of) the taxpayer primarily for internal use by the taxpayer, other than for use in--

(i) an activity which constitutes qualified research (determined with regard to this subparagraph), or

(ii) a production process with respect to which the requirements of paragraph (1) are met.

(F) Foreign research.--Any research conducted outside the United States, the Commonwealth of Puerto Rico, or any possession of the United States.

(G) Social sciences, etc.--Any research in the social sciences, arts, or humanities.

(H) Funded research.--Any research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

Treas. Reg. § 1.41-4 further illustrates in relevant part:

(a) Qualified research–

(1) General rule. Research activities related to the development or improvement of a business component constitute qualified research only if the research activities meet all of the requirements of section 41(d)(1) and this section, and are not otherwise excluded under section 41(d)(3)(B) or (d)(4), or this section.

(2) Requirements of section 41(d)(1). Research constitutes qualified research only if it is research–

(i) With respect to which expenditures may be treated as expenses under section 174, see § 1.174-2;

(ii) That is undertaken for the purpose of discovering information that is technological in nature, and the application of which is intended to be useful in the development of a new or improved business component of the taxpayer; and

(iii) Substantially all of the activities of which constitute elements of a process of experimentation that relates to a qualified purpose.

(3) Undertaken for the purpose of discovering information–

(i) In general. For purposes of section 41(d) and this section, research must be undertaken for the purpose of discovering information that is technological in nature. Research is undertaken for the purpose of discovering information if it is intended to eliminate uncertainty concerning the development or improvement of a business component. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the business component, or the appropriate design of the business component.

(ii) Application of the discovering information requirement. A determination that research is undertaken for the purpose of discovering information that is technological in nature does not require the taxpayer be seeking to obtain information that exceeds, expands or refines the common knowledge of skilled professionals in the particular field of science or engineering in which the taxpayer is performing the research. In addition, a determination that research is undertaken for the purpose of discovering information that is technological in nature does not require that the taxpayer succeed in developing a new or improved business component.

. . .

(4) Technological in nature. For purposes of section 41(d) and this section, information is technological in nature if the process of experimentation used to discover such information fundamentally relies on principles of the physical or biological sciences, engineering, or computer science. A taxpayer may employ

existing technologies and may rely on existing principles of the physical or biological sciences, engineering, or computer science to satisfy this requirement.

(5) Process of experimentation–

(i) In general. For purposes of section 41(d) and this section, a process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities. A process of experimentation must fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science and involves the identification of uncertainty concerning the development or improvement of a business component, the identification of one or more alternatives intended to eliminate that uncertainty, and the identification and the conduct of a process of evaluating the alternatives (through, for example, modeling, simulation, or a systematic trial and error methodology). A process of experimentation must be an evaluative process and generally should be capable of evaluating more than one alternative. A taxpayer may undertake a process of experimentation if there is no uncertainty concerning the taxpayer's capability or method of achieving the desired result so long as the appropriate design of the desired result is uncertain as of the beginning of the taxpayer's research activities. Uncertainty concerning the development or improvement of the business component (e.g., its appropriate design) does not establish that all activities undertaken to achieve that new or improved business component constitute a process of experimentation.

(ii) Qualified purpose. For purposes of section 41(d) and this section, a process of experimentation is undertaken for a qualified purpose if it relates to a new or improved function, performance, reliability or quality of the business component. Research will not be treated as conducted for a qualified purpose if it relates to style, taste, cosmetic, or seasonal design factors.

(**Emphasis in original**).

Accordingly, when a taxpayer claims the QREs pursuant to I.R.C. § 41, it must demonstrate that (1) it conducts research projects that meet all statutory requirements outlined in I.R.C. § 41(d) (as in effect on January 1, 2001); and (2) its research project or projects are not excluded by I.R.C. § 41(d)(3)(B) and (d)(4) (as in effect on January 1, 2001). Moreover, to qualify for the Indiana QREs, the taxpayer must demonstrate that the qualified research project or projects are indeed conducted in Indiana.

In this instance, during the audit, the Department's examiners reviewed all documentation concerning the selected forty research projects. The supplemental audit determined none of the projects qualified for Indiana QREs. In concluding that Taxpayer was not entitled to the Indiana QREs, the supplemental audit noted: (1) Taxpayer's projects were based on adaption of existing business components, which were subsequently modified to tailor to customers' particular needs. (2) Taxpayer's customers designed the systems or requested specifically systems to be manufactured or fabricated. (3) Taxpayer's projects were conducted and concluded concerning customer's facility or facilities outside of Indiana. (4) Taxpayer classified all of the supplies and materials it used as "actually direct material and charged to cost of goods sold. There is a basic difference between cost of goods sold and an expense." The supplemental audit further noted that the issue of Taxpayer's claimed Indiana QREs concerning wages is mooted since it determined that Taxpayer was not engaged in qualified research in Indiana.

Taxpayer disagreed. Taxpayer referenced Project Number 23667 ("Project One") and Project Number 24824 ("Project Two") as examples to illustrate that it conducted qualified research activities in Indiana and it was entitled to the Indiana QREs. Upon review, Taxpayer's illustrations on both projects on how its research activities were conducted and concluded were similar, except the customers' needs for the products were different. Project One was a project concerning a manifold system; Project Two was "a custom vacuum jacketed piping system." Thus, to address Taxpayer's protest, this determination examines Project One and discusses it accordingly, as follows. The following analysis will also apply to Project Two as a result.

Taxpayer stated that Project One was requested by a specific customer located outside of Indiana ("Customer One"). Taxpayer stated that Customer One provided initial sketches, but Taxpayer made various revisions, including calculation or recalculation of air pressure, to produce this manifold system. Taxpayer stated that Project One was required to meet the American Society of Mechanical Engineers (ASME) standard based on Customer One's request. Taxpayer thus claimed that it produced a new manifold system to transfer liquid and gas nitrogen and this new product is the business component; and when it received Customer One's order, there is uncertainty concerning the final, appropriate design of the product, including the most efficient materials of the inner piping, the dimensions of these materials, the weld procedures to be used to construct the manifolds, and the flow requirements necessary to ensure that the system is viable. Taxpayer further claimed that it had undergone the process of experimentation to resolve the uncertainty. Principles of physics, chemistry, and engineering were used in the process of experimentation are technological in nature. Taxpayer stated that the process of experimentation occurred in its Indiana facility and thus maintained that it was entitled to the Indiana QREs.

Upon review, however, Taxpayer's reliance on its interpretation of the applicable law (as in effect on January 1, 2001) concerning qualified research is misplaced. Specifically, Taxpayer claimed that both projects were technological in nature and uncertain; that it conducted experimental activities in its Indiana facility, including "performing calculations, testing, modeling and simulation to eliminate uncertainty." Taxpayer's documentation however demonstrated otherwise.

To support its claimed Indiana QREs on Project One, Taxpayer offered copies of e-mail correspondence, various sketches/drawings, and quotations in addition to an excerpt of "ASME Generc Component Calculations." However, Customer One, a return customer, contacted Taxpayer to manufacture parts and build a custom-made manifold system in its facility located outside of Indiana. Taxpayer's records showed that Customer One offered the sketches and inquired separate estimates from Taxpayer on different materials which could be or would be used, including flexible piping option and rigid piping option. Customer One employed Taxpayer's expertise to build the specific manifold system with a certification of the ASME standard, which has been well developed and established within the industry and Taxpayer advertised that service on its company website. An ASME certification could be issued when a manufacturer (namely, Taxpayer) follows the ASME rules, which "governs the design, fabrication, assembly, and inspection of boiler and pressure vessel components during construction." To follow ASME rules, Taxpayer referenced "ASME Generc Component Calculations," which established a clear process and procedure for manufacturer, like Taxpayer, to build specific products, such as Taxpayer's containers, piping and valves.

For the purpose of claiming QREs "[a] process of experimentation is a process to evaluate more than one alternative designed to achieve a result where the capability or method of achieving that result is uncertain at the outset." T.D. 8930 (Jan. 3, 2001). A process of experimentation "does not include the evaluation of alternatives to establish the appropriate design of a business component when the capability and method for developing or improving the business component are not uncertain." Id.; see also United Stationers, Inc. v. United States, 163 F.3d 440, 446 (7th Cir. 1998); Norwest v. Commissioner, 110 T.C. 454, 496 (1998). Even if this was a process of experimentation, the audit noted that Taxpayer modified its existing products, including "[]R50," to meet Customer One's needs. Thus, experimentation was limited to revising the information initially provided by Customer One.

Taxpayer's documentation showed that research was not to obtain "knowledge that exceeds, expands, or refines the common knowledge of skilled professional in the particular field of technology or science." Research and Experimentation Tax Credit: Current Status and Selected Issues for Congress, CRS RL31181, 2009 WL 5529661 (July 15, 2009). Thus, performing calculations, testing, modeling and simulation were Taxpayer's know-how as it advertised that its products met the ASME standard. In the absence of other supporting documentation, the Department is not able to agree that Taxpayer's "calculations, testing, modeling and simulation" was a process of experimentation for the purposes of I.R.C. § 41(d), especially when some of the tests were performed after the system was manufactured. I.R.C. § 41(d)(4)(A).

Additionally, Taxpayer provided price estimates on different materials as Customer One requested. Taxpayer's "Quotation" stated that its "Scope of Work was prepared based upon information provided." Taxpayer noted that "[t]he Maximum Allowable Working Pressure (MAWP) for this equipment is [] PSI. Unless otherwise noted the price shown does not include delivery charges or any applicable sales tax. . . . The price shown is based upon information provided by the customer and is subject to change if the customer requirements are changed. . . ." Taxpayer's "Terms and Conditions of Sale" further outlined "cancellation of any existing Purchase Order for goods and/or services that [Taxpayer] possesses" and "Product Returns." Thus, the Department is not able to agree that Project One was a new or improved business component for the qualified research under I.R.C. § 41(d). Rather, Customer One specifically purchased a custom-made and certified under ASME standard manifold system for its out-of-state facility.

In short, Taxpayer's supporting documentation demonstrated that for both projects, it offered its know-how to manufacture custom-made products with the ASME certification based on specifications. In building the custom-made systems outside of Indiana, Taxpayer followed the "ASME Generc Component Calculations" and adapted its existing business components with some modifications. Taxpayer changed, revised, or modified the initial design based on requests from its customers and the ASME standard. Taxpayer further claimed cost of goods sold on the materials used and restocked the returned materials. Given the totality of the circumstances, in the absence of other supporting documentation, the Department is not able to agree that Taxpayer is entitled to the Indiana QREs.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Underpayment Penalty.

DISCUSSION

The Department imposed an underpayment penalty because Taxpayer failed to timely remit its estimated payments of adjusted gross income tax under IC § 6-3-4-4.1(d). Taxpayer protested the imposition of the underpayment penalty.

IC § 6-3-4-4.1(d) states:

> The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:
>
> (1) the annualized income installment calculated under subsection (c); or
> (2) twenty-five percent (25 [percent]) of the final tax liability for the taxpayer's previous taxable year.
>
> In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25 [percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

Taxpayer provided sufficient documentation demonstrating that the imposition of the underpayment is not appropriate.

FINDING

Taxpayer's protest of the underpayment penalty is sustained.

SUMMARY

For the reasons discussed above, on the Issue I, Taxpayer's protest of the disallowance of Indiana QREs, including the unused and available to be carried forward, is respectfully denied. On the Issue II, Taxpayer's protest of the underpayment penalty is sustained.

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